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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/303,368

04/30/1999

MARION SCOTT BRIGHT

BU9-99-021

8261

7590

10/24/2006

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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/303,368	Applicant(s) Bright et al.	
	Examiner O'Connor	Art Unit 3627	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on July 19, 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37(c).

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37(c) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

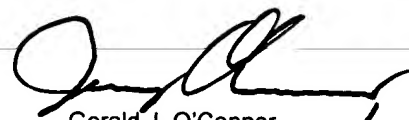
1. ☐ The brief was filed on or after September 13, 2004 and does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a correct statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise and/or correct statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal or include separate subheadings identifying any claim or groups of claims argued separately (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

Copy of the claim language is not a proper "summary of the claimed invention."

Every means plus function recitation not properly identified.

Does not set forth the structure, material, or acts described in the specification corresponding to each recited mean-plus-function recitation.

See MPEP 1205.02(v), a copy of which is attached.


 Gerald J. O'Connor
 Primary Examiner
 Art Unit: 3627
 10/16/06

*>(iii)< *Status of Claims*. A statement of the status of all the claims in the application, or patent under reexamination, i.e., for each claim in the case, appellant must state whether it is cancelled, allowed >or confirmed<, rejected, >withdrawn, objected to,< etc. Each claim on appeal must be identified.

*>(iv)< *Status of Amendments*. A statement of the status of any amendment filed subsequent to final rejection, i.e., whether or not the amendment has been acted upon by the examiner, and if so, whether it was entered, >or< denied entry**. This statement should be of the status of the amendment as understood by the appellant. >Appellants are encouraged to check the Office's Patent Application Information Retrieval (PAIR) system for the status of any amendment or affidavit or other evidence filed after a final rejection or the filing of a notice of appeal.<

Items *>(iii)< and *>(iv)< are included in 37 CFR *>41.37(c)(1)< to avoid confusion as to which claims are on appeal, and the precise wording of those claims, particularly where the appellant has sought to amend claims after final rejection. The inclusion of items *>(iii)< and *>(iv)< in the brief will advise the examiner of what the appellant considers the status of the claims and post-final rejection amendments to be, allowing any disagreement on these questions to be resolved before the appeal is taken up for decision by the Board.

> **>(v) *Summary of claimed subject matter*. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters.< While reference to page and line number of the specification **>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference char-

acters. If appellant does not provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), the Office will notify appellant of the defect in the brief and give appellant a time period within which to file an amended brief. See 37 CFR 41.37(d).<

**>(vi) *Grounds of rejection to be reviewed on appeal*. A concise statement of each ground of rejection presented for review.< For example, the statement ** "Whether claims 1 and 2 are unpatentable" would not comply with **>the rule, while the statements< "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones," *>and< "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 112, first paragraph, as being based on a nonenabling disclosure" **>would comply with the rule. The statement cannot include any argument concerning the merits of the ground of rejection presented for review. Arguments should be included in the "Argument" section of the brief.<

**>(vii)< *Argument*. The appellant's contentions with respect to each **>ground of rejection< presented ** and the basis for those contentions, including citations of authorities, statutes, and parts of the record relied on, should be presented in this section. >A statement which merely points out what a claim recites will not be considered an argument for patentability of the claim.<

**>37 CFR 41.37(c)(1)(vii)< contains the following sentence:

Any arguments or authorities not included in the brief >or reply brief filed pursuant to § 41.41< will be refused consideration by the Board **, unless good cause is shown.

This sentence emphasizes that all arguments and authorities which an appellant wishes the Board to consider should be included in the brief >or reply brief<. It should be noted that arguments not presented in the brief >or reply brief< and made for the first time at the oral hearing are not normally entitled to consideration. *In re Chiddix*, 209 USPQ 78 (Comm'r Pat. 1980); *Rosenblum v. Hiroshima*, 220 USPQ 383 (Comm'r Pat. 1983).

**>This sentence< is not intended to preclude the filing of a supplemental paper if new authority should become available or relevant after the brief >or reply brief< was filed. An example of such circumstances would be where a pertinent decision of a court or